



SAN JOSE OFFICE OF APPEALS
2665 N FIRST ST STE 100
SAN JOSE CA 95134

(408) 232-3036

ASHLEY M GJOVIK
Claimant-Appellant

Case No. **7253819**

Issue(s): 1256

Date Appeal Filed: 03/07/2022

EDD: 0190 BYB: 09/05/2021

Date and Place of Hearing(s):
(1) 07/14/2022

Parties Appearing:
Claimant

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 30 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Douglas Bird, Administrative Law Judge

ASHLEY M GJOVIK
1050 BENTON ST APT 2310
SANTA CLARA, CA 95050-4875

Date Mailed: **JUL 27 2022**

Case No.: 7253819

CLT/PET: Ashley M. Gjovik

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

San Jose Office of Appeals

ALJ: Douglas Bird

ISSUE STATEMENT

The claimant appealed from a determination disqualifying the claimant for unemployment benefits under Unemployment Insurance Code section 1256. The issue in this case is whether the claimant was discharged for misconduct connected with the most recent work.

FINDINGS OF FACT

Prior to the filing of the claim for benefits the claimant last work in September of 2021 as a senior engineering program manager at a salary of \$169,000 per year. She worked approximately six and a half years for the employer.

The claimant received notice from the vice president that she was being discharged. The notice was vague and incomplete and stated that the claimant had disclosed confidential information and had not fully participated in some investigation. Although the claimant requested specific information from the employer, no specific information was provided.

Prior to the separation of the employment the claimant received great performance reviews and prior to the separation the claimant received no oral or written warning notifying her that job was in jeopardy. At all times the claimant performed her job duties to the best of her ability.

REASONS FOR DECISION

An individual is disqualified for benefits if he or she has been discharged for misconduct connected with his or her most recent work. (Unemployment Insurance Code, section 1256.)

The employer has the burden of proving misconduct. (*Prescod v. California Unemployment Insurance Appeals Board* (1976) 57 Cal.App.3d 29.)

Mere ineptitude or failure to work "up to par" is not misconduct. (Precedent Decision P-B-224.)

In Precedent Decisions P-B-214, P-B-222, and P-B-224 the appeals board held that poor work performance, inefficiency, ineptitude, or a failure to perform "up to par" does not normally constitute misconduct.

In Precedent Decision P-B-222 the claimant performed poorly despite being counseled, causing substantial financial loss to the employer. The appeals board found that the evidence did not establish a wilful disregard of the employer's interests and held his discharge was not for misconduct.

In this matter the evidence shows that the claimant was discharged for reasons other than misconduct connected with the most recent work. Since the claimant performed her job duties to the best of her ability and had not received warnings putting her on notice that her job was in jeopardy, the claimant was discharged for reasons other than misconduct and she is qualified for benefits under section 1256.

DECISION

The department determination is reversed. The claimant is not disqualified from benefits under section 1256 of the code. Benefits are payable provided the claimant is otherwise eligible.

BARSU:mgDAB1/2



EDD TELEPHONE NUMBERS:
ENGLISH 1-800-300-5616
SPANISH 1-800-326-8937
CANTONESE 1-800-547-3506
MANDARIN 1-866-303-0706
VIETNAMESE 1-800-547-2058
TTY (NON VOICE) 1-800-815-9387

ACKNOWLEDGMENT OF LETTER

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ASHLEY M GJOVIK
1050 BENTON ST APT 2310
SANTA CLARA CA 95050

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Mail Date: 04-11-2022

Name: ASHLEY M GJOVIK

Office Address:

Employment Development Department
UI Center Anaheim
P.O. BOX 66000
ANAHEIM, CA 92816-6600

Your correspondence regarding a recent decision by the EDD about your Unemployment Insurance (UI) claim has been received.

Your appeal has been processed and forwarded to the San Jose Office of Appeals. You will receive a hearing notice from that office giving you the day, time and place of your hearing. . If you have any questions regarding your appeal hearing or want to withdraw your appeal, you must contact the Office of Appeals at (408) 232-3036 . The EDD cannot legally withdraw your appeal on your behalf. If you have other questions concerning your UI claim, please send an online message through the "Contact EDD" website at www.edd.ca.gov or call one of the toll-free numbers listed above.

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EMPLOYMENT DEVELOPMENT DEPT
UI CENTER ANAHEIM
P.O. BOX 66000
ANAHEIM

CA 92816-6000



NOTICE OF DETERMINATION

DATE MAILED 02/04/22
BENEFIT YEAR BEGAN 09/05/21

A M GJOVIK 0190
1050 BENTON ST APT 2310
SANTA CLARA CA 95050-4875

EDD TELEPHONE NUMBERS:
ENGLISH 1-800-300-5616
SPANISH 1-800-326-8937
CANTONESE 1-800-547-3506
MANDARIN 1-866-303-0706
VIETNAMESE 1-800-547-2058
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FOR OFFICE USE ONLY

YOU ARE NOT ELIGIBLE TO RECEIVE BENEFITS UNDER CALIFORNIA UNEMPLOYMENT INSURANCE CODE SECTION 1256 BEGINNING 09/05/21 AND CONTINUING UNTIL YOU RETURN TO WORK AFTER THE DISQUALIFYING ACT AND EARN \$2250.00 OR MORE IN BONA FIDE EMPLOYMENT, AND YOU CONTACT THE ABOVE OFFICE TO REOPEN YOUR CLAIM.

YOU WERE DISCHARGED FROM YOUR LAST JOB WITH APPLE INC. BECAUSE YOU BROKE A REASONABLE EMPLOYER RULE. AFTER CONSIDERING THE AVAILABLE INFORMATION, THE DEPARTMENT FINDS THAT YOU DO NOT MEET THE LEGAL REQUIREMENTS FOR PAYMENT OF BENEFITS. SECTION 1256 PROVIDES - AN INDIVIDUAL IS DISQUALIFIED IF THE DEPARTMENT FINDS HE VOLUNTARILY QUIT HIS MOST RECENT WORK WITHOUT GOOD CAUSE OR WAS DISCHARGED FOR MISCONDUCT FROM HIS MOST RECENT WORK. SECTION 1260A PROVIDES - AN INDIVIDUAL DISQUALIFIED UNDER SECTION 1256 IS DISQUALIFIED UNTIL HE/SHE, SUBSEQUENT TO THE DISQUALIFYING ACT, PERFORMS SERVICES IN BONA FIDE EMPLOYMENT FOR WHICH HE/SHE RECEIVES REMUNERATION EQUAL TO OR IN EXCESS OF FIVE TIMES HIS OR HER WEEKLY BENEFIT AMOUNT.

APPEAL:

YOU HAVE THE RIGHT TO FILE AN APPEAL IF YOU DO NOT AGREE WITH ALL OR PART OF THIS DECISION.

TO APPEAL, YOU MUST DO ALL OF THE FOLLOWING:

A. COMPLETE THE ENCLOSED APPEAL FORM (DE 1000M) OR WRITE A LETTER STATING THAT YOU WANT TO APPEAL THIS DECISION. IF YOU WRITE A LETTER TO APPEAL, EXPLAIN THE REASON WHY YOU DO NOT AGREE WITH THE DEPARTMENT'S DECISION. WRITE YOUR SOCIAL SECURITY NUMBER ON EACH DOCUMENT YOU SUBMIT TO THE DEPARTMENT. (TITLE 22, CALIFORNIA CODE OF REGULATIONS (CCR), SECTION 5008).

B. MAIL THE DE 1000M OR YOUR LETTER TO THE ADDRESS OF THE OFFICE LISTED ON

THE FIRST PAGE OF THIS DECISION.

C. FILE YOUR APPEAL WITHIN THIRTY (30) DAYS OF THE MAIL DATE OF THIS NOTICE OR NO LATER THAN 03/07/22.

YOUR HANDBOOK, "A GUIDE TO BENEFITS AND EMPLOYMENT SERVICES," GIVES MORE INFORMATION ABOUT APPEALS. IF YOU DO NOT HAVE A HANDBOOK, YOU CAN READ OR ORDER THE HANDBOOK ONLINE BY VISITING THE DEPARTMENT'S WEBSITE AT WWW.EDD.CA.GOV. TO ORDER A HANDBOOK, VISIT WWW.EDD.CA.GOV/FORMS, ENTER PUBLICATION NUMBER "DE 1275A" IN THE FORM LOCATOR, AND FOLLOW THE ONLINE INSTRUCTIONS.

APPEAL INFORMATION:

WHEN YOUR APPEAL IS RECEIVED, YOUR CASE WILL BE REVIEWED. IF THE DECISION REMAINS THE SAME, THE DEPARTMENT WILL SEND YOUR APPEAL TO THE OFFICE OF APPEALS. IF YOU APPEAL AFTER THE 30 DAYS, YOU MUST INCLUDE THE REASON FOR THE DELAY. THE ADMINISTRATIVE LAW JUDGE WILL DETERMINE WHETHER YOU HAD GOOD CAUSE FOR THE DELAY. IF THE ADMINISTRATIVE LAW JUDGE DETERMINES YOU DID NOT HAVE GOOD CAUSE FOR SUBMITTING YOUR APPEAL LATE, YOUR APPEAL WILL BE DISMISSED.

THE OFFICE OF APPEALS WILL SEND YOU A LETTER WITH THE DATE, PLACE, AND TIME OF YOUR HEARING AND A PAMPHLET EXPLAINING APPEAL HEARING PROCEDURES. AT THE HEARING, THE ADMINISTRATIVE LAW JUDGE WILL LISTEN TO YOU, EXAMINE THE FACTS, AND ISSUE A DECISION. YOU MAY HAVE A REPRESENTATIVE OR SOMEONE ELSE HELP YOU DURING THE HEARING.

CONTINUING CERTIFICATION:

IF YOU ARE ELIGIBLE TO CONTINUE TO CERTIFY FOR BENEFITS WHILE YOU WAIT FOR THE ADMINISTRATIVE LAW JUDGE'S DECISION, THE DEPARTMENT WILL ISSUE CONTINUED CLAIM FORMS AND YOU MUST CONTINUE TO CERTIFY FOR BENEFITS ON TIME. IN SOME CASES, YOU WILL NOT BE ABLE TO CERTIFY FOR BENEFITS UNTIL THE ADMINISTRATIVE LAW JUDGE ISSUES A DECISION. IF THE ADMINISTRATIVE LAW JUDGE DECIDES YOU ARE ELIGIBLE FOR BENEFITS, THE DEPARTMENT WILL ISSUE CONTINUED CLAIM FORMS. BENEFITS CAN ONLY BE PAID FOR WEEKS THAT YOU HAVE CERTIFIED FOR BENEFITS AND ARE OTHERWISE ELIGIBLE TO RECEIVE BENEFIT PAYMENTS.

OTHER SERVICES:

VISIT WWW.EDD.CA.GOV FOR INFORMATION ABOUT (1) JOB REFERRALS, (2) DISABILITY INSURANCE, (3) OTHER EDD SERVICES (4) SERVICES OFFERED BY OTHER AGENCIES.